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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,713	12/04/2003	Charles Buchan Ritchie	8830-257 US (192507)	6927

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EXAMINER
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NAGPAUL, JYOTI

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 05/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/727,713

Applicant(s)

RITCHIE, CHARLES BUCHAN

Examiner

Jyoti Nagpaul

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 11-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

Amendment filed on March 2, 2006 has been acknowledged. Claims 11-18 are pending.

#### ***Response to Amendment***

Rejection of Claim 1 as being anticipated by Taylor (US 5027872) has been withdrawn in light of applicant's amendments.

Rejection of Claims 1-10 as being anticipated by Paoletti (US 4573506) has been modified in light of applicant's amendments.

#### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 11-18** are rejected under 35 U.S.C. 102(b) as being anticipated by Paoletti (US 4573506).

Paoletti teaches a fluid storage apparatus. The apparatus comprises a first container (220) having a first chamber **capable of** being filled with a fluid. The apparatus further comprises a second container (210) having a second chamber **adapted to** receive fluid from the first chamber. (See Figures 11 and 12) The second container having a piston (13) means slideably receivable within the first chamber of the first container (220), wherein the piston (13) means into the first chamber of the first container (220), fluid is displaced from the first chamber to the second chamber. (See

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Figures 11 and 12) The piston means (13) and the second container (210) are integrally formed. (See Figure 10). The piston means (13) has a bore (15) that fluidly communicated with the first and second chambers. The bore (15) has a first portion having a first diameter which is adjacent to the second chamber and a second portion having a second diameter which is smaller than the first diameter which is remote from the second chamber. (See Figures 1 and 2) Paoletti does not explicitly disclose these limitations. However, it is inherent that the bore (15) of the piston means (13) will have a first portion having a first diameter which is adjacent to the second chamber and a second portion having a second diameter which is smaller than the first diameter which is remote from the second chamber because the shape of the piston means (13) is conical. The apparatus further teaches sealing means (23) **adapted to** seal the first (220) and second containers (210) together as the fluid is displaced to the second chamber (210). (See Figures 3-5 and 11-12) The apparatus further comprises cutting means (70) adapted to remove a part of the apparatus such that the stored fluid may be removed from the second container (210). The fluid storage apparatus is disposable. Examiner notes, it has been held that the recitation than element is "adapted to" and "capable of" perform a function is not a positive limitation but only requires the ability so perform. It does not constitute a limitation in any patentable sense. In re Hutchison 69 USPQ 138.

### ***Response to Arguments***

Applicant's arguments with respect to claims 11-18 have been considered but are moot in view of the new ground(s) of rejection.

In response to applicant's arguments, the recitation "fluid disruption and storage apparatus" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jyoti Nagpaul whose telephone number is 571-272-1273. The examiner can normally be reached on Monday thru Friday (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JN

  
Jill Warden  
Supervisory Patent Examiner  
Technology Center 1700